IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROL A. POST,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	No. 02-1917
HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY,	:	
Defendant.	:	

ROBERT F. KELLY, Sr. J. DECEMBER 6, 2002

Presently pending before this Court is Defendant's Motion to Dismiss Counts II-V of Plaintiff's Complaint. For the following reasons, Defendant's Motion will be granted.

I. Facts

Carol A. Post ("Plaintiff") brought claims against Hartford Life and Accident Insurance Company ("Defendant") for allegedly violating the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C.A. § 1001 et seq., and breaching its fiduciary duty. This case involves a dispute over an ERISA § 3(1) Employee Welfare Benefit Plan. Specifically, the case involves a group disability insurance plan (the "Plan") provided by Plaintiff's employer, Overlook Hospital of New Jersey. Plaintiff claims that she is totally disabled from any and all work.[1] As a result, Plaintiff contends that she is entitled to the contractually promised benefits of her group disability insurance plan. In late 2001, Defendant terminated Plaintiff's benefits based

[1] Plaintiff is certified as both a Dentist and a Pharmacist. (Pl.'s Mem. Law Contra. Def.'s Mot. to Dismiss at 2). On November 27, 1993, Plaintiff was involved in a motor vehicle accident. (Compl., ¶ 10). Between 1995 and 2001, a series of disputes arose between Plaintiff and Defendant regarding Defendant's right to seek medical information to establish Plaintiff's ongoing entitlement to benefits. (Id., ¶¶ 13-57).

on her alleged refusal to submit to medical examinations required by Defendant under the Plan.[2] Plaintiff alleges that this request is unwarranted and medically unsound given Plaintiff's condition. Plaintiff also contends that Defendant's request is indicative of a pattern of conduct which shows a breach of Defendant's fiduciary duties.

II. STANDARD

A motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)(citing Conley, 355 U.S. at 45-46); see also Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a motion to dismiss, all well pled allegations in the complaint must be accepted as true and viewed in the light most favorable to the non-moving party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989)(citations omitted).

III. DISCUSSION[3]

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[2] The Plan vests Defendant with full discretion and authority to determine eligibility for benefits and to construe and interpret all provisions of the Plan. (Def.'s Mem. Law Supp. Mot. to Dismiss at 1-2)(citing Compl., Ex. A (copy of the Plan)).

[3] Defendant's Motion to Dismiss pertains only to Counts II, III, IV and V of Plaintiff's Complaint. (Def.'s Mem. Law Supp. Mot. to Dismiss). Defendant does not seek dismissal of Plaintiff's Count I, a claim for denial of benefits pursuant to section 502(a)(1) of ERISA, 29 U.S.C.A. § 1132(a)(1). (Id. at 1). ERISA section 502(a)(1)(B) provides that a participant or beneficiary of an ERISA plan may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C.A. § 1132(a)(1)(B). Although Defendant disputes Plaintiff's liability contentions regarding Count I, it concedes that her Complaint sets forth a claim for denial of benefits pursuant to ERISA section 502(a)(1). (Def.'s Mem. Law

A. Count II

Plaintiff's Count II is a claim for breach of fiduciary duty arising out of an alleged injury to the Plan under ERISA section 502(a)(2), 29 U.S.C.A. § 1132(a)(2) and 29 U.S.C.A. § 1109.[4] (Compl., ¶¶ 75-78). "[A] claim under § 1132(a)(2) must be premised upon harm to the entire Plan, rather than harm to a particular individual." Bellas v. CBS, Inc., 73 F. Supp.2d 493, 498 (W.D. Pa. 1999)(citing McMahon v. McDowell, 794 F.2d 100, 109 (3d Cir. 1986), cert. denied, 479 U.S. 971 (1986)(stating that "damages for breach of fiduciary duty do not go to any individual plan participant or beneficiary, but inures to the benefit of the plan as a whole"))(citations omitted). "Plan participants or beneficiaries may sue a plan fiduciary for breach of a fiduciary duty pursuant to § 1132(a)(2)." DeFelice v. Daspin , No. 01-1760, 2002 WL 1373759, at *6 (E.D. Pa. June 25, 2002). However, "[t]hey may not do so . . . to obtain individual relief but only for the benefit of the plan." Id. (citing Mass. Mut. Life Ins. Co. v.

Supp. Mot. to Dismiss).

[4] 29 U.S.C. §§ 1109 and 1132(a)(2), state in relevant part:

> § 1109 Liability for breach of fiduciary duty
> (a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary....
>
> § 1132 Civil enforcement
> (a) Persons empowered to bring a civil action A civil action may be brought--
> (2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title.

29 U.S.C. §§ 1109, 1132(a)(2).

Russell, 473 U.S. 134, 140 (1985); McMahon, 794 F.2d at 109). "ERISA functions to prevent 'possible misuse of plan assets,' and its remedies function to 'protect the entire plan ....'" Mose v. U.S. Health Care Sys. of PA, Inc., No. 95-6553, 1996 WL 397465, at *2 (E.D. Pa. July 9, 1996)(citing Mass. Mutual, 473 U.S. at 141). Therefore, "a simple denial of benefits cannot form the basis of a suit for breach of fiduciary duty to the plan itself." Id. (citations omitted).

Defendant seeks dismissal of Plaintiff's Count II based on the grounds that a simple denial of benefits cannot form the basis of a suit for breach of fiduciary duty to the Plan itself. (Def.'s Mem. Law Supp. Mot. to Dismiss at 3). Defendant argues that "the gravamen of plaintiff's complaint is that she has been denied long term disability benefits to which she claims to be entitled." (Id. at 4). Based upon this argument, Defendant goes on to state that Count II of Plaintiff's Complaint should be dismissed for failure to state a claim "[b]ecause a simple denial of benefits does not qualify as fiduciary malfeasance." (Id.). Plaintiff counters Defendant's argument with the contention that "[t]his case is nowhere near a 'simple denial of benefits' claim." (Pl.'s Mem. Law Contra Def.'s Mot. to Dismiss at 3). In relation to the Plan, Plaintiff argues that her Complaint includes "over fifty factual allegations detailing the malfeasance of Defendant in the administration of the Plan." (Id.).

The Court finds that Plaintiff's Count II must be dismissed. The contentions in Plaintiff's Complaint relate to her alleged entitlement of benefits and clarification of her rights under the Plan. Therefore, Plaintiff's claim is based upon an allegedly wrongful denial of her disability benefits in contravention to the Plan. As stated above, "a simple denial of benefits claim cannot form the basis of a suit for breach of fiduciary duty to the Plan itself." Mose, 1996 WL 397465, at *2. As a result of the aforementioned, the Court dismisses Plaintiff's Count II

regarding Defendant's alleged breach of fiduciary duty to the Plan. The Court takes this opportunity to note that Plaintiff's remaining count, Count I, provides her with the opportunity "to recover benefits due to [her] under the terms of [her] plan, to enforce [her] rights under the terms of the plan, or to clarify [her] rights to future benefits under the terms of the plan." 29 U.S.C.A. § 1132(a)(1)(B). Thus, Plaintiff's contentions regarding her alleged entitlement to benefits and clarification of her rights under the Plan will be addressed in Count I.

B. Count III

Plaintiff's Count III is a claim for equitable relief under ERISA section 502(a)(3), 29 U.S.C.A. § 1132(a)(3).[5] (Compl., ¶¶ 79-80). "[A]n individual plan participant or beneficiary may sue any party acting in a fiduciary capacity under § 1132(a)(3) for 'appropriate' equitable relief for breach of fiduciary duty." Blahuta-Glover v. Cyanamid Long Term Disability Plan, No. 95-7069, 1996 WL 220977, at *4 (E.D. Pa. Apr. 30, 1996)(citing Varity Corp. v. Howe, 516 U.S. 489, 506-515 (1996); Bixler v. Cent. PA Teamsters Health & Welfare Fund, 12 F.3d 1292, 1298 (3d Cir. 1993)). That is, "[t]hey may sue under § 1132(a)(3) but only for 'appropriate equitable relief.'" DeFelice, 2002 WL 1373759, at *6. Generally, "[r]elief is . . . not appropriate if otherwise provided elsewhere under ERISA." (Id.).

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[5] Section 502(a)(3) provides:

> A civil action may be brought by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.

29 U.S.C. § 1132(a)(3).

"There are no reported cases in which a plan beneficiary was permitted to maintain a § 1132(a)(3) claim for an alleged erroneous denial of benefits." Blahuta-Glover, 1996 WL 220977, at *5. "Recognizing that § 1132(a)(1)(B) specifically provides a remedy to a beneficiary for a wrongful denial of benefits, the Supreme Court assumed that § 1132(a)(3) was designed to provide 'other remedies for yet other breaches of other sorts' or 'appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy.'" (Id. at *4)(citing Varity, 516 U.S. at 510-514). Since "§ 1132(a)(1)(B) provides an adequate remedy, a claim for equitable relief for an alleged simple wrongful denial of benefits cannot be maintained under § 1132(a)(3)." Id. at *5 (citing Perlman v. Swiss Bank Corp. Comprehensive Disability Prot. Plan, 916 F. Supp. 843, 844 (N.D. Ill. 1996)).

Defendant's Motion to Dismiss Plaintiff's section 1132(a)(3) claim is premised upon the argument that Plaintiff has an adequate remedy under Count I, ERISA section 1132(a)(1)(B), which provides a remedy to a beneficiary for a wrongful denial of benefits.[6] (Def.'s Mem. Law Supp. Mot. to Dismiss at 4). Defendant argues that "[b]ecause ERISA section 1132(a)(1)(B) (Count I) provides plaintiff with an adequate remedy, plaintiff's claim for equitable relief for an alleged simple wrongful denial of benefits cannot be maintained under section 1132(a)(3)." (Id. at 5). Defendant's argument relies upon the decision in Varity Corporation v. Howe, 516 U.S. 489 (1996). In Varity, the Supreme Court opined that if

[6] As mentioned earlier, ERISA section 502(a)(1)(B) provides that a participant or beneficiary of an ERISA plan may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C.A. § 1132(a)(1)(B). Plaintiff's Count I is based upon Section 502(a)(1)(B) and seeks a judgment that she is entitled to benefits and a clarification of her rights under the Plan.

Congress provided plaintiffs with an adequate remedy for their injury elsewhere in ERISA, then "there will likely be no need for further equitable relief, in which case such relief would normally not be 'appropriate'" under ERISA section 1132(a)(3). Id. at 515. Based upon the aforementioned argument, many courts have cited the language in Varity in dismissing claims for breach of fiduciary duty upon a motion to dismiss where a plaintiff has also asserted a claim for benefits under ERISA section 1132(a)(1)(B).[7] Plaintiff counters Defendant's argument by stating that Count I, which seeks to recover benefits and guarantee them in the future, does not afford the equitable relief sought by Plaintiff in Count III. (Pl.'s Mem. Law Contra Def.'s Mot. to Dismiss). In support of her argument, Plaintiff claims that ERISA section 502(a)(3) sculpts the equitable relief that she seeks, whereas, Count I "does not afford the type of relief such as mandating the manner of requesting medical information, the frequency of requesting information, the manner of accounting for the benefits, and the deference that should be afforded to treating physicians." (Id. at 5).

The Court finds that Plaintiff's Count III must be dismissed. After examining Plaintiff's claim, it is apparent that the claim is based upon Defendant's alleged wrongful denial of benefits. However, as stated earlier, "a claim for equitable relief for an alleged simple wrongful denial of benefits cannot be maintained under § 1132(a)(3)." Blahuta-Glover, 1996 WL 220977, at *5. Plaintiff's request for equitable relief in the form of regulating the manner of

[7] See Reilly v. Keystone Health Plan East, Inc., No. 98-1648, 1998 WL 422037, at *4 (E.D. Pa. July 22, 1998); Smith v. Thomas Jefferson Univ., 52 F. Supp.2d 495, 498 n. 4 (E.D. Pa. 1999); Feret v. CoreStates Fin. Corp., No. 97-6759, 1998 WL 426560, at *5 (E.D. Pa. July 27, 1998). But see Nicolaysen v. BP Amoco Chem. Co., No. 01-5465, 2002 WL 1060587, at * 2 (E.D. Pa. May 23, 2002); Moore v. First Union Corp., No. 00-2512, 2000 WL 1052140, at *1 (E.D. Pa. July 24, 2000); Parente v. Bell Atl. PA., No. 99-5478, 2000 WL 419981, at *2-*4 (E.D. Pa. Apr. 18, 2000).

requesting medical information, the frequency of requesting such information and the manner of accounting for benefits relate to questions regarding Plaintiff's rights under the Plan. As such, these contentions are properly part of Plaintiff's denial of benefits claim in Count I. As for Plaintiff's contention relating to her request for equitable relief regarding the issue of what deference should be afforded to treating physicians, the question of how an administrator evaluates various types of medical evidence is common in denial of benefits claims. Based upon the aforementioned, appropriate relief for Plaintiff's alleged injuries is available under ERISA section 1132(a)(1)(B) in Count I. Since Plaintiff's Count I provides appropriate relief to Plaintiff under ERISA section 1132(a)(1)(B), the Count dismisses Count III seeking equitable relief under ERISA section 1132(a)(3).

C. Count IV

Plaintiff's Count IV is a claim for relief for Defendant's alleged "Failure to Follow Plan Documents." (Compl., ¶¶ 81-82). Relying upon ERISA section 502(a)(1)(B), 29 U.S.C.A. § 1132(a)(1)(B), Plaintiff's claim is based upon the allegation that "[i]n addition to failing to meet the minimum standards as are set forth under ERISA, Defendant's actions breached their own Summary Plan Description." (Id., ¶ 82). Defendant contends that this claim must be dismissed because it is duplicative of Count I. Defendant argues that in Count IV, Plaintiff merely recharacterizes her Count I (denial of benefits) as a claim for "Failure to Follow Plan Documents." (Def.'s Mem. Law Supp. Mot. to Dismiss 5-6). Defendant states that "ERISA does not provide any separate relief to plaintiff based on her recasting of her denial of benefits claim as a failure to follow Plan documents." (Id. at 6). Defendant goes on to argue that "it is implicit in Count I of plaintiff's complaint that she is alleging that [Defendant] failed to follow

Plan documents." (Id.). Thus, Defendant seeks dismissal of Plaintiff's Count IV for failure to state a claim for relief. (Id.).

Plaintiff counters Defendant's argument with the assertion that ERISA sets the floor and the Plan sets the ceiling. (Pl.'s Mem. Law Contra Def.'s Mot. to Dismiss at 6). Plaintiff fails to identify any case law or provision of ERISA suggesting that a separate cause of action exists for denial of benefits for failure to follow Plan documents. Without providing any legal support for her argument, Plaintiff contends that various acts of misconduct by Defendant not only constitute ERISA violations, but also constitute breaches of contractual provisions above and beyond ERISA's minimums. (Id.). Although not specifically presented as a breach of contract claim, it appears that Plaintiff's Count IV closely resembles a breach of contract claim. If Plaintiff is attempting to assert a breach of contract claim, such claim would be dismissed because "ERISA has consistently been interpreted to specifically preempt state law actions for breach of contract." Nice v. Indep. Blue Cross, 1997 WL 299428, at *2 (E.D. Pa. May 22, 1997)(citing Pane v. RCA Corp., 868 F.2d 631, 635 (3d Cir. 1989); Arber v. Equitable Beneficial Life Ins. Co., 848 F. Supp. 1204, 1215 (E.D. Pa. 1994); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 45 (1987)).

In support of her claim under Count IV, Plaintiff also relies upon the principle of "*contra proferentem* . . . which means that all ambiguous terms must be construed against the drafter of the document." (Pl.'s Mem. Law Contra Def.'s Mot. to Dismiss at 6). However, Plaintiff does not identify any term(s) of the Plan that are allegedly ambiguous or subject to being construed against Defendant. Even if there was a dispute as to the construction of the terms of the Plan, it would not provide an independent theory of liability because that dispute is part of

Plaintiff's ERISA section 1132(a)(1)(B) denial of benefits claim.

Based upon the above reasons, the Court finds that Plaintiff's Count IV must be dismissed. The Court is unaware of any "Failure to Follow Plan Documents" claim under ERISA. In fact, Plaintiff fails to provide any indication of a legal basis for this claim. After reviewing this claim, it is evident that it is substantively identical to Count I. Since Count I addresses Plaintiff's arguments in Count IV, the Court dismisses Count IV of the Complaint.

D. Count V

Plaintiff's Count V, entitled "State Claim to the Extent Same is not Pre-empted by ERISA," is a state claim for relief.[8] (Compl., ¶¶ 83-84). Count V of Plaintiff's Complaint provides, in pertinent part:

> The actions of Defendant are in violation of Pennsylvania law regarding the Fiduciary Duty owed by an Insurer and/or its fiduciary to a policy holder and/or beneficiary, and despite the fact that this is an employer/employee relationship, there does not appear to be a complete preemption of the claims arising in this particular case, *namely, the improper denial of benefits in contravention to the Summary Plan Benefits.*[9]

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[8] 29 U.S.C.A. § 1144(a) (preemption clause) states in relevant part:

> Except as provided in subsection (b) of this section [the saving clause] the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.

29 U.S.C.A. § 1144(a)

[9] Despite the fact that Plaintiff alleges that the Plan is governed by New Jersey law, her claim is premised upon Pennsylvania law. (Compl., ¶¶ 19, 83-84). Based upon the allegations in the Complaint, even if Pennsylvania common law and statutory claims were not preempted and even if Plaintiff could assert a private cause of action under them, Count V would still be dismissed because, according to Plaintiff, the Plan is not subject to Pennsylvania law.

(Compl., ¶ 83)(emphasis added). The Court notes that Plaintiff's claim fails to identify what state law claim she is attempting to allege.[10]

"Section 502(a)(1)(B), the civil enforcement provision of the ERISA statute, completely preempts all state law claims to recover benefits due, or to clarify the rights to future benefits under the terms of an ERISA plan." Oslowski v. Life Ins. Co. of N. America, 139 F. Supp.2d 668, 676 (W.D. Pa. 2001)(citing 29 U.S.C. §§ 1001, et seq., § 1132(a)(1)(B); Metro. Life Ins. Co. v. Taylor, 481 U.S. 58, 66 (1987)). "Section 502(a)(1)(B) of ERISA provides the exclusive civil enforcement mechanism for beneficiaries to recover benefits from a covered employee benefit plan." Walker v. Aetna Life Ins. Co., No. 98-5154, 1999 WL 84112, at *2 (E.D. Pa. Feb. 19, 1999)(citing 29 U.S.C. § 1132(a)(1)(B); Metro. Life, 481 U.S. at 62-63). "ERISA preempts all state laws insofar as they 'relate to' an employee benefit plan under ERISA." Id. (citing 29 U.S.C. § 1144(a)). "A state law or common law cause of action relates to a benefit plan if it has a connection with or reference to such a plan." Id. (citing Pilot Life, 481 U.S. at 47-48). An action "relates to" an ERISA plan and is preempted "[w]here the existence of an ERISA plan is a critical factor in establishing liability and the court's inquiry must be directed to the plan." Id. (citing Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 139-140 (1990)).

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[10] Plaintiff does not identify which Pennsylvania law allegedly governing the relationship between herself and Defendant has been violated. However, it appears that Plaintiff is attempting to state a claim premised upon violation of the Pennsylvania Unfair Insurances Practices Act (the "UIPA"), 40 Pa.C.S.A. section 1171.1 et seq. Any claim by Plaintiff under the UIPA must be dismissed because there is no private right of action under the UIPA. See Lites v. Great Am. Ins. Co., No. 00-525, 2000 WL 875698, at *6 (E.D. Pa. June 23, 2000)(stating "[i]t is well settled in Pennsylvania that no private allegation of a UIPA violation can be maintained."); Smith v. Nationwide Mut. Fire Ins. Co., 935 F. Supp. 616, 620 (W.D. Pa. 1996)(stating "it is clear that there is no private cause of action under the UIPA. . . ."); Parasco v. Pacific Indem. Co., 870 F. Supp. 644, 647 (E.D. Pa. 1994).

Upon reading Plaintiff's state law claim, it is clear that it is based upon Defendant's alleged "improper denial of [Plaintiff's] benefits in contravention to the Summary Plan Benefits." (Compl., ¶ 83). Thus, by her own description, Plaintiff's state law claim clearly involves, or "relates to," the ERISA plan at issue in this case. Since Plaintiff's Count V "relates to" an ERISA plan, it is preempted by 29 U.S.C. § 1144(a). Thus, Plaintiff's Count V is dismissed.

IV. CONCLUSION

Based upon the aforementioned, Plaintiff's Counts II, III, IV and V are dismissed.

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CAROL A. POST,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	No. 02-1917
HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY,	:	
Defendant.	:	

ORDER

AND NOW, this 6 th day of December, 2002, upon consideration of Defendant's Motion to Dismiss Counts II-V of Plaintiff's Complaint (Dkt. No.2), the Response and Reply thereto, it is hereby ORDERED that the Motion is GRANTED.

BY THE COURT:

Robert F. Kelly, Sr. J.